إليه أدعو وإليه مآب

مآب

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المجمع الملكي لبحوث الحضارة الإسلامية

TREATMENT OF NON-MUSLIMS IN ISLAM

THE ROYAL ACADEMY FOR
ISLAMIC CIVILIZATION RESEARCH
(ĀL ALBAIT FOUNDATION)
AMMAN, JORDAN

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FOREWORD

"Treatment of Non-Muslims in Islam", the topic of this book, was originally one of the medium-term projects undertaken by the Royal Academy for Islamic Civilization Research (Āl Albait Foundation), in partial fulfillment of its objectives, "to present a modern integrated Islamic conception of the values and systems of society, as well as to anticipate future developments and address the problems and challenges of the times with practical Islamic solutions based on the Holy Quran and Tradition (Sunna)".

When the project was completed, the Academy published in 1989 two volumes (682 pages), in Arabic, which comprised twelve chapters. The two volumes were well received, and many non-Arabic speaking scholars urged the Academy to publish an English version of the two Arabic volumes, in an abridged form.

It pleases me to introduce this English version, which was edited and translated by Mr. Bakr R. Abbas, from the Arabic summary of the two volumes prepared by Dr. Iḥsan Ṣudqi El-Amad, and to thank Mr. Abbas and Dr. El-Amad for their sincere efforts in producing this English version.

Dr. Nassir El-Din El-Assad
President, the Royal Academy
for Islamic Civilization Research
(Āl Albait Foundation)

Amman, Jordan
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TRANSLATOR'S PREFACE

The chapters that constituted the original Arabic version of this book were written by learned scholars, and as such, they are sometimes too intricate for non-specialized readers. Moreover, each scholar contributed his chapter or paper completely independent of the others, and due to the fact that these chapters, as proposed to them, are naturally inter-related, there has been an inevitable measure of overlapping and repetition.

It has been the desire of the Royal Academy for Islamic Civilization Research (Āl Albait Foundation), to present an English translation of this work in a simpler form, and readily comprehensible to readers who are not well versed in the technical intricacies that characterize the language of Islamic jurisprudence. For this purpose, the chapters have been subjected to extensive editing, reshuffling, omission and simplification without tampering with the core material contained in the chapters. The sequence of the chapters in this translation is dictated by the nature of the subjects treated.

The book in its present form is addressed to a category of readers altogether different from that addressed by the Arabic version; and, therefore, there has been a shift in the points of emphasis, but without deviating from the purpose for which it was originally produced. I hope that I have been successful in fulfilling the task entrusted to me by H. E. Dr. Nassir El-Din El-Assad, President of the Royal Academy for Islamic Civilization Research, and that the book, as planned, will be found interesting and will serve to elucidate a subject that has been greatly misunderstood by misconception, unorthodox practices and dogmatic prejudice.

B. R. 'Abbās

INTRODUCTION

It is not the intent of this book to tackle the differences in faiths and beliefs between Muslims and non-Muslims, or to discuss the history of non-Muslims in Islamic states except where such discussion is necessitated by the nature of the subject being treated. The intent is to explain, from the Islamic point of view, the manner that characterized Muslim dealings with non-Muslims in life affairs and the rules applicable to either party or both when they live in one or more countries. This subject used to be treated in the works of earty and latter Muslim jurists under the heading "The *Dhimmīs*, People of Covenant or People of the Book", and the provisions relating to them in the Quran and the Sunna of the Prophet.

Treatment of non-Muslims under Islam requires : 1) definition of the People of the Book and people without a book as explained in the Quran, 2) deciding whether or not it is permissible to utilize. or seek the help of. non-Muslims in any worldly affair, war or peace buying or selling, partnership or trade. or in any other way to communicate and cooperate with them.

Such discussion must also cover sects other than Christians and Jews. At this juncture, sects such as adherents of Mazdaism, Zoroastrianism and the Sabians will be discussed in the light of the provisions of the Quran, the Sunna and other references relating to them.

Utilization or seeking the help of non-Muslims has also been discussed in detail in conjunction with the issue of whether or not it is permissible to assign work to non-Muslims and have them participate in shouldering public responsibilities.

All these matters should be conscientiously handled in the light of changing circumstances continually experienced by the human society, and their

suitability to our modern times, as we witness every day a practical answer to many queries that are no longer applicable under the impact of change and evolution.

Some people confuse utilization or seeking help of a non-Muslim (*isti'ānah*) with confederating (*muwālāh*) with a non-Muslim. Are the two one and the same? And since "*muwālāh*" is prohibited, should such prohibition extend by analogy to "*isti'ānah*"?

It is our conviction that Muslim scholars and preachers should have deeply ingrafted in the minds of Muslims the meaning intended in the Quranic verses prohibiting "*muwālāh*" and impressed on them that wronging *Dhimmīs* and people under covenant (covenantees) would incur the wrath and punishment of God. On the other hand, sagacious non-Muslims should have deeply rooted in the hearts of their groups the sense of proper citizenship and the need to shed aside undue sensitivities, and cooperate in building a united society. Many of the tragic events that took place, we are sure, would have been avoided, and the recurring sad incidents would have diminished. It seems that the efforts previously exerted toward this end have been insufficient to cleanse the sediments of the past from the hearts of both sides. A scientific, objective and analytical discussion of the topics involved is, we feel, a meaningful step towards the desired end. It would be a great achievement to prevent, through such effort, recurrence of tragic events that can only deepen the schism and stir up latent animosities and grudges.

I

THE CALL TO ISLAM AND EARLY COVENANTS

Prophet Muhammad started the call to Islam to the outlying parts of Arabia and abroad after his *Hijra* (migration) from Makka to Medīna and receiving the Quranic injunction: "Say: 'O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him, that we erect not, from among ourselves, lords other than God.' If they turn away, say, 'Bear witness that we are Muslims bowing to God's will'." (III:64)[1] He is also admonished by God: "Invite to the way of thy Lord with sagacity and proper preaching, and argue with them [the People of the Book] in the best and gracious way" (XVI:125).

Acting on this divine injunction, he sent messages to the most important potentates at the time. Historical sources have retained several such messages, which are quoted here for their very important significance[2] :

1. Message to *an-Najāshī* (Negus) of Abyssinia[3]

> "In the name of God, the Most Merciful, the Most Compassionate.
>
> From Muhammad, the Messenger of God, to *an-Najāshī*, Potentate of Abyssinia
>
> Peace to all who follow guidance:
>
> I praise to you God, other than Whom there is no god, the Holy one, the Source of Peace, the Guardian of the Faith, the Preserver of Safety. I testify that Jesus Christ, the son of Mary, was a spirit and word of God bestowed on Mary, the

good chaste virgin, so she conceived Jesus through His spirit breathed into her, as He had created Adam. I call you to God alone, Who has no partner, to join me in obeying Him, to follow me and believe in what I have received, for I am the Messenger of God. I call you and your followers to God, the Exalted, the Sublime. I have conveyed the message and given sincere advice. Peace to all who follow guidance."

2. Message to *Heraql* (Heraclius), Emperor of Byzantium[4]

"In the name of God, the Most Merciful, the Most Compassionate.

From Muḥammad, Devotee and Messenger of God, to Heraclius, Potentate of the Byzantines

Peace to all who follow guidance:

I extend to you the call to Islam. Embrace Islam and you will gain salvation. Embrace Islam and God will give you double reward. If you turn away, you will bear the sin for the yeomen. "Say: 'O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him, that we erect not, from among ourselves, lords other than God.' If they turn away, say, 'Bear witness that we are Muslims bowing to God's will'." (III:64)

3. Message to *Kisrā* (Chosroe), King of Persia[5]

"In the name of God, the Most Merciful, the Most Compassionate.

From Muḥammad, the Messenger of God, to *Kisrā*, Potentate of Persia

Peace to all who follow guidance and believe in God and His Messenger:

I testify that there is no god but Allah alone with no partner, and that Muḥammad is His Devotee and Messenger. I call you to God for I am God's Messenger to all people to warn those who are alive and let the sentence be due to those who disbelieve. Embrace Islam and you will gain salvation. If you refuse, you will bear the sin for the Magi."

4. Message to *al-Muqawqis* (Cyrus), Potentate of the Copts[6]

"In the name of God, the Most Merciful, the Most Compassionate.

From Muḥammad, Devotee and Messenger of God, to al-*Muqawqis*, Potentate of the Copts

Peace to all who follow guidance:

I extend to you the call of Islam. Embrace Islam and you will gain salvation, and God will give you double reward. If you turn away, you will bear the sin for the Copts. "Say: 'O People of the Book! Come to common terms as between us and you: that we worship none but God, that we associate no partners with Him, that we erect not, from among ourselves, lords other than God.' If they turn away, say, 'Bear witness that we are Muslims bowing to God's will'."

5. Message to al-Mundhir ibn Sawa, Prince of al-Baḥrayn[7]

"In the name of God, the Most Merciful, the Most Compassionate.

From Muḥammad, the Messenger of God, to al-Mundhir ibn Sawa.

Peace be upon you:

I praise to you God other than Whom there is no god, and testify that there is no god but Allah and that Muḥammad is His Devotee and Messenger. I remind you of God, the Exalted, the Sublime. Whoever fares with sincerity, does so only for his own good. Anyone who obeys my envoys and follows their commands does obey me, and whoever is true to them is true to me. My envoys have spoken well of you, and I have accepted your intercession on behalf of your people. Leave to Muslims what they had when they embraced Islam. I have forgiven offenders, so accept them. As long as you are upright we will not depose you from your post. Those who hold to their Judaism or Mazdaism shall pay the poll tax."

Other messages were also sent to various tribal chieftains inside Arabia calling them to embrace Islam and adapt their lives to its requirements, responsibilities and privileges here and in the life to come. With communities who believed in God but could not bring themselves to accept Muḥammad as God's Prophet and Messenger, generally called People of the Book, Muhammad made covenants granting them an assurance of safety (*amān*) and freedom of faith so long as they abided by the terms of such covenants. We quote, as representative documents, the covenants given to "*Banū Habībah* and the people of *Maqnā*", a town near *Ayla* at the northern end of the Gulf of 'Aqaba, and to the Christians of Najrān.

1. "In the Name of God, the Most Merciful, the Most Compassionate.

   Peace be with you:

It has been revealed to me that you are to go back to your town. When you receive this letter of mine, you shall be secure, and you shall be under the covenant of God and His Messenger. The Messenger of God has forgiven your wrongdoings and any blood you have incurred. No one shall share your town with you save the Messenger of God or his envoy. You shall not be subjected to any wrong or aggression. The Messenger of God shall defend you against whatever he would defend himself. The Messenger of God shall have [a quarter of] your armor, slaves, and horses unless the Messenger of God or his envoy waives any part thereof. You owe one quarter of what your date palms yield, one quarter of what your fishermen catch and one quarter of what your women weave. The Messenger of God has relieved you of all tribute and forced labor. If you heed and obey, the Messenger of God shall honor those who are highly regarded among you and forgive the offenders. Any one of *Banū Habībah* and the people of *Maqnā* who harbors good intent toward Muslims, it will be the better for him, and whoever does evil to them, it will be the worse for him. You shall have a governor only someone from among you."[8]

2. "In the name of God, the Most Merciful, the Most Compassionate. This is what Prophet Muhammad, the Messenger of God, wrote to the people of Najrān over whose produce, cattle and slaves he had full sway. He was magnanimous to them and left them all that against providing two thousand of "*awāqī*" dresses: one thousand each Rajab (seventh month of the lunar year) and one thousand each Ṣafar (second month). Each dress shall be one

"*uqiyyah*" (i.e. the value of each dress is one *ūqiyyah* - about 125 gram of silver, and any increase or decrease in the total value shall be adjusted proportionately. Any armor made by them, or horses, or other riding animals or goods provided shall be taken from them by account. They have to provide lodging for my envoys for one month or less, and my envoys shall not be detained for more than one month. They have to loan thirty armors, thirty horses and thirty camels in the event there is ill contrivance in Yemen. If any horses or animals loaned to my envoys perish, they shall be held responsible for them until such animals are returned. Najrān and its surrounds shall be in the covenant of God and the covenant of His Messenger, with regard to themselves, their faith, their land, their property, those of them who are away and those who are present, their provisions, their envoys and their emblems. Nothing of their order shall be changed, nor any of their rights or distinctive emblems. No bishop shall be lured away from his bishopric, nor any monk or churchwarden nor shall they be required to give up what is in their custody, be it small or large. They shall not be answerable for past offenses or blood. They shall not be evicted or tithed. No army may traverse their land. If any one of them claims a right, such claim shall be adjudicated by them in Najrān without incurring injustice to themselves or to others. Any one of them who resorts to usury shall cease to be under my covenant. No man among them shall be held responsible for the offense of another. In accordance with this document, they shall be in the refuge of God and under the protection of Prophet Muḥammad until God's

ordinance comes, as long as they have fared with good intent and conscientiously discharged their responsibilities, without being taxed with anything in an unjust way."[9]

Later, 'Umar ibn al-Khaṭṭāb, the second caliph, and his generals gave similar covenants to conquered cities and towns in Syria, which were at later dates taken as models by various caliphs sultans amirs and army generals throughout history. We cite here, as examples, 'Umar's covenant to the people of Jerusalem, the covenant of Khālid ibn al-Walīd (general of the first caliph, Abū Bakr, in Syria) to the people of Damascus, the covenant of Abū 'Ubaydah ('Umar's general after Khālid) to the people of Baalbek (in Lebanon), and the covenant of 'Abd al-'Azīz ibn Mūsā ibn Nuṣayr (one of the captains of the Arab army in Spain) to Tudmir ibn 'Abdūsh (Theodomir of Murcia).

1. 'Umar's covenant to the people of Jerusalem[10]

"In the name of God, the Most Merciful, the Most Compassionate.

This is the assurance of safety (*amān*) which the devotee of God, 'Umar, the Commander of the Faithful, has granted to the people of *Ilya* (Jerusalem). He has given them an assurance of safety for themselves, for their property, their churches, and their crosses, whether those residing in it or on the land around it[11] as well as the rest of its people[12]. Their churches shall not be inhabited (by Muslims) and shall not be destroyed; and no part thereof or of the land on which they stand, or of their crosses, or their property will be taken. They will not be forcibly converted and no one among them will be coerced; and no Jew will live with them in Jerusalem. The people of Jerusalem shall pay the poll tax like the people

of the [other] cities. They shall expel the Byzantines and the brigands; but whoever wishes to stay shall be safe and has to pay the poll tax payable by the people of Jerusalem. As for those of the people of Jerusalem who wish to leave with the Byzantines, take their property with them and abandon their churches and crosses, they and their churches and crosses shall be safe until they reach their refuge. As for the villagers (*ahl al-arḍ*) who are in the city[13], whoever wishes to remain in it may do so but has to pay the poll tax payable by the people of Jerusalem, whoever wishes to leave with the Byzantines may do so, and whoever wishes to go back to his folks may do so, and nothing will be taken from them until their crops are harvested. If they [the people of Jerusalem] pay the poll tax required from them, then the contents of this document shall be under the covenant of God and the pledge of His Messenger, the caliphs and the faithful."

'Umar gave other cities in Syria similar covenants with a few variations in the text.

2. Khālid ibn al-Walīd's covenant to the people of Damascus.

"In the name of God, the Most Merciful, the Most Compassionate.

This is what Khālid ibn al-Walīd has granted to the people of Damascus if he enters it. He gave them an assurance of safety (*amān*) for themselves, their property, and their churches, and that the wall of their city shall not be demolished and none of their houses shall be occupied. For that, they have the commitment unto God and the pledge of His

Messenger, the caliphs and the faithful; and they will be faced with nothing but good, if they pay the poll tax."[14]

3. The covenant of Abū 'Ubaydah ('Umar's general in Syria and later his administrative governor of the country).

"In the name of God, the Most Merciful, the Most Compassionate.

This is an assurance of safety (*amān*) to the people of *Baalbek*, be they Byzantine, Persian or Arab, for themselves, their property, their churches, their houses, inside and outside the city, and for their flour mills. The Byzantines may graze from their abode to a distance of fifteen "miles" (about 30 kilometers) and they may not reside in an inhabited town. After the months of Rabī' II and Jumādā I (the fourth and the fifth months of the lunar year), they can go anywhere they like. Those of them who embrace Islam shall have the same privileges and obligations that we have. Their tradesmen can go to any towns with which we have covenants. Those who stay shall pay the poll tax and the land tax. Given under the witness of God Who is the best witness."

Similar covenants were given by Abū 'Ubaydah to a great number of cities in northern Syria. It may be significant to mention that, as related in the sources, the poll tax collected at the beginning from the people of Ḥomṣ (Emesa) was returned to them when the Byzantines re-grouped and the Muslims felt that they would not be able to defend the city. Both Christians and Jews declared that they preferred Muslim rule and justice to the oppressive inequities they had been under, and vowed to defend the city against the Byzantines and not admit any en-

voy of Heraclius unless they were overwhelmed and beaten. Other cities followed suit.[15]

4. Covenant of 'Abd al-'Azīz ibn Mūsā ibn Nuṣayr to Tudmir (Theodomir of Murcia in Spain).[16]

"In the name of God, the Most Merciful, the Most Compassionate.

Letter addressed by 'Abd al-'Azīz ibn Mūsā ibn Nuṣayr to Tudmir ibn 'Abdūsh, who sought peace. He is given a covenant, under commitment to God and the pledge of His Prophet, that there will be no change in his situation nor in that of any of his people, that he will not be deposed; that his people will not be killed or reduced to captivity, nor will they be separated from their children or wives; that they will not be disturbed in the practice of their religion [or forcibly converted]; that their churches will not be burned. He shall remain in sovereignty so long as he conducts himself sincerely and satisfies the conditions we set for him. He has entered into peace on behalf of the seven towns: Orihuela, Baltana, Alicante, Mula, Villena, Lorca and Ello. In addition, he will not give shelter to any of our runaway slaves or an enemy of ours; nor will he scare anyone to whom we have assured of safety; nor will he keep secret information that may come to his attention about an enemy. He and his people shall pay each year one dinar, four mudds (about 3.25 kilograms) of wheat and four of barley, four measures of malt, four of vinegar, two of honey and two of oil. These amounts shall be reduced by half for the slaves."

Although 'Abd al-'Azīz was not the superior commander of the Muslim army in Spain, his covenant was binding on all Muslim authorities, including the Caliph: "The covenants of all Muslims are one and the same," i.e., they are binding on all Muslims.

We have quoted the above documents at length because they constitute the earliest evidence of the treatment accorded by Muslims to monotheistic non-Muslims. Taken in their historical context, they reflect a measure of exemplary tolerance and magnanimity unknown for many centuries to come. It should be kept in mind that the sayings and actions of the Prophet (generally called the Sunna) are considered a basic source of Islamic legislation second only to the Quran. Therefore, the covenants granted by Muḥammad and the earlier caliphs, who could only follow his example, constitute fundamental rules for Muslim behavior toward non-Muslims. For a pious Muslim, a covenant is a commitment to God, given in His name and witnessed by Him, and, as such, is of an inviolable and solemn sanctity. Honoring a covenant is not only a matter of respecting one's promise or pledge, but an act of obedience to God, Who enjoined, "Fulfill the Covenant of God when you have entered into it, and break not your oaths after you have confirmed them, for you have made God your upholder" (XVI:91). Hence the saying of the Prophet: "Whoever harms a *dhimmī* will have me for an antagonist". No true Muslim would incur the antagonism of the Prophet and invoke upon himself the wrath and punishment of God. It also follows that violation of such covenant by the other party is, to such Muslim, an intolerable provocation and serious breach of faith that justify stern reprisal. In the cases where such treaties failed to hold, we should, objectively and candidly, look for the underlying causes of such failure. All such events should be viewed only within their historical perspective.

II

NON-MUSLIMS IN MUSLIM SOCIETY AND DHIMMA COVENANT

Arabic lexicons define *dhimma*, however used, as *'ahd* (covenant) or *kafālah* (guarantee). Therefore, the term *ahl adh-dhimma* (people of *dhimma*) indicates a group of people who have a covenant with Muslims (or who represents them), under which their rights are protected. They are sometimes called *al-Mu'āhidah* (covenantees), who are not to be subjected to any injustice or punishment unless they violate the covenant.

Historical instances tend to stress this sense of the word. When the people of Mount Lebanon reacted by revolt against the unjust treatment of the 'Abbāsid *wālī* (governor), the governor retaliated by expelling them from their place. al-Awzā'ī, the prominent jurist of Syria at the time, wrote to him denouncing his action as an injustice to these people inasmuch as it constituted an abrogation by the state of the covenant it had given to them because the punishment involved innocent people who did not participate in the revolt; and, moreover, those who revolted were not slaves but "free people under covenant (*ahl dhimma*)".[17]

The emphasis on the fact that they were not slaves, at a time when slavery was widespread, gave them the rights of the free and imposed on them certain obligations in return.

Several *ḥadīths* (traditions) of the Prophet vehemently enjoin fair treatment of *dhimmīs*, e.g., "whoever harms a *dhimmī* shall have me for an antago-

nist". Terms used in the covenants indicate great regard for them, such as describing them as being *fī jiwār Allāh* (under the covenant of God), and *fī dhimmat rasūl Allāh* (under the covenant of the Messenger of God). *Dhimma* as a covenant used to cover two categories of people: (a) those who had a temporary assurance of safety, and were called "*al-musta'mins*", and (b) those who had a permanent assurance of safety, and were called "*ahl adh-dhimma*".

Another term for *ahl adh-dhimma* was *ahl al-kitāb* (People of the Book). To whom does the term specifically apply?

It evidently applies to the Jews and the Christians. The Jews included the Samaritans and every other sect that believed in the Old Testament. On the other hand, the Christians included the Jacobites, the Nestorians, Melkites and others. They were called *ahl al-kitāb* (People of the Book) because the Arabs were without a book before the Quran.

The term *kitāb* (book) is the key word that allows other sects who had books to be included with the Jews and Christians under the appellation *ahl al-kitāb*, and precludes sects who had no prophet with a divine book. The Quran speaks of 'books' sent to Abraham and David. Had there been sects who specifically followed either, they would have been included in the term '*ahl al-kitāb*'. The non-existence of such sects restricted the term to the Jews and Christians, and therefore, they were treated as *dhimmīs*.

On the other hand, the Magi were considered as *dhimmīs* during the days of the Prophet and the Muslim conquest, and the poll tax was accepted from them rather than being considered pagan from whom nothing short of embracing Islam would have been acceptable. Were the Magian considered "people of a book"? Here we go back to the *ḥadīth* related by 'Abd ar-Raḥmān ibn 'Awf (one of the notable companions of the Prophet), who testified that he heard the Prophet say: "Treat them the way the People of the Book are treated". This

means that they were not considered as 'people of a book', but the treatment accorded to the People of the Book was extended to them.

The case of the Magi can be taken as an example for the exercise of judgement on the part of Islamic jurists in expanding the applicability of the term "*ahl al-kitāb*". They had several validated *ḥadīths* that permitted acceptance of poll tax from the Magi; and both Abū Bakr and 'Umar (the first two caliphs) did accept the tax from them. One party argued that the Magi had a book that was lifted from them; and, therefore, they were not people of a book per se, nor were they wholly pagan, but in between the two. Another party asserted that they were not '*ahl kitāb*' as evidenced by the *ḥadīth* quoted above, and bolstered by the fact that the Prophet prohibited eating their meat and marrying their women, which was not the case with the People of the Book.

It seems that the applicability of '*ahl al-kitāb*' was expanded during the reign of al-Ma'mūn (the eighth 'Abbāsid caliph) to include the Sabians, and may have extended to other sects. However, Muslim scholars never bothered to consider the status of the peoples who had the Avesta and the Veda, for the two books were not mentioned in the Quran, and consequently, Muslim ulema could not think of them as divine scriptures.

In conclusion, the term '*dhimmīs*' included *ahl al-kitāb* and those who were accorded similar treatment. The covenant granted to them implied acceptance of them as residents in Islamic territories (*dār al-Islām*) while holding to their religions on condition they paid the '*jizyah*' (poll tax) in return for protecting them and relieving them from military service, otherwise having the same privileges and obligations as the Muslims. The poll tax was a specified amount of money, or the equivalent thereof, that would be increased or decreased as circumstances changed. It was levied annually from each sane adult male who was not afflicted with any handicap and had an income that enabled him to pay it. The amount of

the tax varied according to financial ability and was dropped upon embracing Islam, death, insolvency, inability of the state to provide protection, or participation of the *dhimmīs* in the defence of Islamic territories. It resembled the *zakāh* (alms-tax) and other financial obligations imposed on Muslims.

The poll tax was instituted in the Quran: "... until they pay the *jizyah* (poll tax)", (IX:29), and was considered one of the conditions of peace and security by the Prophet who included it in the covenants granted to *dhimmīs* and ordered the captains of his regiments to accept it as a price for peace, freedom and security. There is no disagreement among Muslim jurists over the acceptability of *jizyah* with the exception of ibn Ḥazm, the eminent Andalusian jurist, who tied its acceptance to an acknowledgement by the People of the Book that Muḥammad is the Messenger of God to Muslims, and abstinence from defaming him or any disparagement of Islam.[18]

Let us now consider the nature of this tax which was imposed on *dhimmīs*. The covenants concluded between them and the Muslims stipulated: "If we protect you, you shall pay the *jizyah*, otherwise you will not have to pay until we do so".[19] We refer to the incident related in al-Balādhurī's "*Futūḥ al-Buldān*" when the Muslims returned the *jizyah* they had received from certain areas in Syria when they had to withdraw from those areas, saying, "You stipulated that we should defend you and we are not able to do so. Therefore, we return what we have received from you". According to the understanding of both parties, the poll tax was a price for defence; and those who accepted to pay it were in a pressing need for what they bargained for in a world of continually changing affiliations. In many instances, a group of *dhimmīs* would render the state a certain service in lieu of the tax, such as participating in war or sharing in its burdens. Associating the tax with submission does not mean or entail humiliation: it rather meant adherence to the discipline of the state. According to ibn Ḥazm,

"submission means that the rulings of Islam shall apply to them and that they will not openly practice what is prohibited in Islam". Payment of the poll tax under Byzantine rule was also associated with submission, but the taxpayers did not feel that such submission was humiliating to them.

Thus the *dhimmī* covenant was associated in the beginning with *jihād* and dissemination of the faith. Those who preferred to hold to their religion chose to be in the status of *dhimmīs* who could preserve their religious freedom, property and dignity unimpaired if they committed themselves to (a) pay the tax called *jizyah* and (b) adhere to Islamic *Sharī'ah* (law) principles in transactions, penalties and judicial rulings. Such commitment would assure them of (a) protection, which also entailed that they would not be the object of any aggression, (b) freedom of faith and the exercise of rites relevant to their faith, and (c) the right to exercise the principles of their faith in matters relating to the family.

The covenants concluded between Muslims and conquered lands stressed the desire of Muslims to guarantee safety of persons, property, religion, and places of worship: "No bishop will be lured away from his bishopric, nor any monk or churchwarden.They shall not be answerable for past offenses or blood. No army may traverse their land" (The Prophet's covenant to the people of Najrā))n). Khālid ibn al-Walīd, in his covenant to the people of al-Ḥīra (in Iraq) added: ". . . and if they seek the help of Muslims they will be succored and the provisions for such succor will be disbursed from Muslim treasury".[20]

Viewing these covenants which were written at the dawn of Islam, with a fair mind and a measure of objectivity, one cannot help wondering at their meticulous exactness in spite of their simplicity, and that they were written by people who had so much respect for the rights of others in spite of the decided difference in religion. Without such difference in faith, there would have been no need for any covenant between them. Those who wrote the various covenants

thought of the rights of other sects condensed in one principle: "They shall have the same privileges and obligations that we have". Their jurists resented any injustice done to these *dhimmīs* and denounced any oppression inflicted on them by the state, asserting that *dhimmīs* were not slaves to be thus ill-treated.

Then there was a steep decline from the state of affairs that prevailed in the early days of Islam. *Dhimmīs* were required to have, among other things, distinctive dress and carriage. But in our search for the causes that brought about this change, we should not lose sight of the nature of military and political relations between the Muslim state and the Byzantine Empire. The latter invariably used the people of the Islamic boundary towns as the object of its hostilities to annoy the former. The Muslim state would retaliate by constraining the Christians living on its territories. It is true that the Christians were not guilty of any offence, but it was equally true that the constraints imposed on them did not derive from the established principles of Islam. Then came the Crusades which greatly aggravated matters and instilled deeper grudges and ill-will that left the local Christians in a critical and embarrassing situation. To understand the implications of the *jizyah* and the distinctive dress or appearance, we should view them within their historical context and cease to think of them as inevitable byproducts of Islam.

The ultimate remedy for such a situation is to turn to the actual spirit of Islam. The Islamic stance in this respect is expressed in the verse: "Let there be no compulsion in religion" (II:256). In other words, Islam guarantees freedom of faith without impinging on the norms and traditions of the majority, and historically accepted the fundamental principle of: "They shall have the same privileges and obligations that we have". This, in fact, encompasses the elemental concept of good citizenship and sets the healthy environment for co-existence under which human rights are observed on the basis of diversity of faiths, races and colors, which is inherent in every society. Such co-existence requires institution of a sys-

tem of rights and obligations that promotes harmony between the various groups and the state under which they exist.

After all, the *dhimma* covenant should be looked upon in a different light today, for the systems that define and organize relations have changed and are now governed by the international law. Moreover, those who were once called *dhimmīs* are nowadays an integral and undiscriminated part of their country's whole. They participate in the defence of their country on an equal footing, and pay the various taxes imposed under the new systems by the modern state, which superseded the *jizyah*.

III

JIHĀD AND DĀR AL-ISLĀM

I. *Dhimmīs* in *Dār al-Islām* (Muslim Territories)

The *dhimmī* sector in the Islamic social structure in the Middle Ages was a direct outcome of *jihād*. *Jihād* is not war, nor is it holy war as usually translated. It is a procedure of three successive steps: (a) a call to embrace Islam; and, (b) if rejected, to pay *jizyah* (poll tax); and, (c) if both alternatives fail, it is war. Of course, the three alternatives were not of equal weight. In the case of powers such as the Byzantine and Persian Empires, the first two steps were too presumptuous and the third bordered on the ridiculous. In other cases, however, the second alternative was the simplest, especially when power was not a sure gamble, or when the populace had no cause to fight for.

In Syria, for instance, the people of the country had for a long time been governed, and consequently protected, by a foreign power, and had to pay a tribute similar to *jizyah*. In most cases, they had certain grudges against their foreign rulers due to the heavy taxes they had to pay. Discrimination among sects (Jacobites, Melkites, Nestorians, etc.) was another factor of discontent. In such cases, the new-comers (Muslims) were not unwelcome.

Before long, the rapid expansion of Islam gave a new identity to the world at the time. Even at the early stages of the call to Islam, the world came to be divided into two regions: *dār al-Islām* and *dār al-ḥarb*.[21]

Dār al-Islām comprised the territories in which Islam rulings and rites were exercised; and *dār al-ḥarb* was all the areas outside Muslim sovereignty and were ruled by non-Muslims. This division entailed many consequences, the first of which was the existence of non-Muslims in Muslim territories. Non-Muslims were called *dhimmīs* if they were of the original settlers of the territory and *musta'mins* if they entered it on a temporary basis. Another consequence was the migration (*hijra*) of Muslims from *dār al-ḥarb* to *dār al-Islām*. Such migration was in the beginning from Makka to Medīna, but was later stopped with the saying of the Prophet, "No *hijra* after the conquest [of Makka]". In other words, a Muslim could migrate to a conquered land but not from it. Migration becomes mandatory, when possible, if a Muslim could not openly exercise the rites of his religion where he resides; otherwise, it was only desirable.

One of the consequences of the war was the increase of the number of slaves and captives on both sides. Ransoming Muslim captives from *bayt al-māl* (Muslim treasury) was mandatory. Ibn Hazm opined that a Muslim captive could only be ransomed with money or an unbelieving captive. As to non-Muslim captives, they were either freely released or exchanged.

War entailed also either embracing Islam willingly or holding a peace treaty. Such treaty was either a temporary agreement that was called *muwāda'ah* (mutual holding up of warfare) or *dhimma* covenant. The first was a temporary arrangement, whereas the second was a permanent one that allowed non-Muslims to reside in Muslim territories and assured them of protection from any inside or outside aggression or oppression. Thus the various developments of war created new situations for people of what used to be *dār al-ḥarb*, but has become *dār al-Islām*.

There are many Quranic verses and *hadīths* that can be cited about war. Many Muslims came to believe that the relation between Muslims and others was one of war rather than peace. The logical conclusion for such a group was that *jihād* was a perpetual religious duty that could not be abandoned except in observance of a truce or treaty.

Another group, however, was disposed to peace rather than war and forbade Muslims from killing people of different faiths except in retaliation to aggression or if the aggressors blocked the way before the call to Islam. Only in these two cases was war legitimate. In other words, war was not the way for the call to Islam, but to protect the call from being harassed or impeded by aggression. Those who hold to this opinion derive support for their argument from the Quran, the Sunna, the Consensus of Muslim scholars, and Reason, which are the four pillars of Islamic legislation. We cite one example from each of these sources:

1. The Quran: "Fight in the cause of God those who fight you but do not aggress for God does not love aggressors" (II:190).
   "To those against whom war is made, permission is given (to fight) because they are wronged" (XXII:39).
2. *Hadīth*: The Prophet was asked, "A man may fight for gain, a man may fight for glory and a man may fight for elevation (among his companions): who fights for the cause of God?" The Prophet replied, "He who fights so that the word of God is uppermost is the one who fights for the cause of God."
3. Consensus: Muslims unanimously agree that it is not permissible to kill women, minors, the blind, the handicapped, the old or hirelings because all these are not fighters and war can only be

waged against those who start the fighting and not those who merely differ in religion.

4. Reason: Religion is based on conviction while war means using force for compulsion, which is contrary to God's ordinance, "There shall be no compulsion in religion" (II:256).

Much debate has taken place between the two sides. The war-minded individuals usually tried to prove that the Quranic verses and the sayings of the Prophet, which supported peace and restricted war, were annulled by later ordinances. One of the annulled verses, they claimed, was the verse, "There shall be no compulsion in religion." It is interesting to find that ibn Taymiya, a staunch *Hanbalī* scholar and the most enthusiastic proponent of *jihād* against the Mongols and the Crusaders, said that that verse was neither annulled nor limited to certain cases. According to him, it laid down a general rule under which nobody was to be compelled to change his religion; but if he chose to wage war on Muslims, then they would not be to blame.

As for the *ḥadīth*, "I was ordered to fight people until they said: 'There is no god but Allah' ", the majority of Muslim scholars tend to limit it to the heathen Arabs only.

However, the peace option is contingent on two conditions: (a) that Muslim lands are not occupied; otherwise, *jihād* becomes an individual duty if it can be launched; if not, then a temporary truce is acceptable, provided that war remains an option for recovering Muslim territories; (b) that there should be a true advantage in peace, such as inability of Muslims to go to war due to the inadequacy of their numbers or their preparations. If constrained by exigency, Muslims may pay money to their enemy.[22]

II. Muslims as a Minority in *Dār al-Ḥarb*

There have been two parallel cases in history: *dhimmīs* living under Muslim rule and Muslims living in *dār al-ḥarb*.

On several occasions, *dār al-Islām* lost parts of it temporarily or permanently, as was the case in Sicily and al-Andalus (the Iberian Peninsula). Some Muslims preferred to remain in their places for various reasons. In modern times, the Muslims who remained in the Balkan states, following the cessation of the Ottoman rule, are living in a non-Muslim or even atheist environment. Millions live in India, but they are only a large minority. In what was called the Soviet Union, Muslims counted over sixty million, most of whom lived in Islamic republics, but, nevertheless, they were subject to a communist regime, politically, economically and socially. The same thing can be said of the large number of Muslims in communist China. Albania, the only Muslim republic in Europe, is again in the clutch of a communist regime.

There are other Muslim minorities in the various countries of Europe and the New World. These minorities are made up of new converts to Islam and immigrants from Muslim countries.

Muslim scholars took different attitudes toward the problem of Muslims in the new societies, past and present. Such attitudes were dictated by the strength or weakness of Muslims. Sometimes, when they could not stand the adversity and oppression of the new regime, they resorted to emigration following the example of the first Muslims of Makka, and sometimes they sought the protection of an influential tycoon.

In some instances, emigration seemed to be the only solution, as in the case of most of the Muslims of Sicily after the Norman conquest of the island and later of *al-Andalus* on a larger scale. Those who remained

were compelled to convert to Christianity, and, yet, formed a class of second rate citizens and continued to be persecuted.

More recently still, Muslims in the Balkan states had to re-live the Andalusian experience once these states got rid of the Ottoman rule. There was a concerted European effort to rid the area of the Muslim elements. Those who withdrew with the Ottoman armies were well aware of the fate that awaited those who remained.

Some Muslim scholars deem emigration as the only solution in such situations, taking, as their analogy, the emigration of some Muslims to Abyssinia and later to Medīna. But the emigration to Abyssinia was undertaken by a few individuals who could return once Muslims gained strength in the homeland. The emigration to Medīna was merely a strategic move. It was only a matter of choosing a spot from which resistance could be conducted. Muḥammad and his companions did not leave the Ḥijāz area, but they could share with Makkans the control of the communication lines, and continued to form new pacts, to jeopardize the Makkan trade and economy, and to weaken the cohesion of the people of Makka in the face of the call to the new faith. All this was carefully calculated and planned, and was gradually executed. Had the Prophet and his companions emigrated to a place within Arabia other than Medīna, they would not have found the strong affiliation and zealous support they found in Medīna. Therefore, the analogy does not stand.

When the Andalusian Muslims asked Maghribī scholars what they should do, the response was that *hijra* was mandatory and that no other way could be properly adopted. But the end was a tragic one, both for those who remained and those who emigrated. Emigration can be, in fact, one of several options, but definitely it is not the only solution. We

see today some people who left their countries under duress. Those who evicted them by force did so because they feared their continued existence with them in their country. Why should they make it easier for their enemy and quit voluntarily and of their own accord? We see today that many of the Muslim territories that were under the Soviet regime or formed part of the Yugoslavian federation have gained their independence, and Muslims have regained sovereignty over their countries, and are no longer minorities within a huge entity. The primary assumption that they would be subject to oppression if they stayed in their countries has evidently lost its tenability. This once more proves the fallacy of drawing analogies from situations with different circumstances and hence varying parameters.

IV

SOCIO-ECONOMIC RELATIONS BETWEEN MUSLIMS AND DHIMMĪS

In social relations between Muslims and *dhimmīs* (specifically here *ahl al-kitāb*), two points have received special emphasis; and no wonder, for these two points are mentioned in the Quran:

1. Permissibility of eating the slaughtered meats of *ahl al-kitāb* by Muslims. The Quranic verse states: ."The food of *ahl al-kitāb* (People of the Book) is permitted to you and your food is permitted to them" (V:5). The general rule applicable to food is that all good foods are permissible. Bad foods are limited to four types: dead animals (before slaughtering), blood, the flesh of swine and what has been consecrated to other than God. Muslim scholars, however, took the word 'food' here to mean "slaughtered animals". They believed that all other kinds of food, such as bread, oil, vegetables and fruit, are the same for Muslims and non-Muslims, while some questions could arise, and in fact did arise, from the prohibition involving consecration. However, there is a clear distinction between the animals slaughtered by polytheists and those slaughtered by *ahl al-kitāb*. Even the Magi, who were generally treated as *dhimmīs* like *ahl al-kitāb*, were excluded.

   Some ulema argued that the meats of *ahl al-kitāb* were not permissible because they do not mention the name of God as they

slaughter the animals. The answer was that God decreed the permission without reference to mentioning His name in conjunction with slaughtering.

2. Permissibility of marrying women from among *ahl al-kitāb* by Muslims. The verse enumerating what has been permitted to Muslims goes on to say, "Chaste believing women and women of those who were given the Book before you [are permitted to you in wedlock]" (V:5). Chastity is tantamount to goodness, which means that the idea of permitting what is good applies in both cases of food and marriage. On the other hand, the Quran prohibits marriage to women of faiths other than Muslims and *ahl al-kitāb*: "Do not marry polytheist women until they believe" (II:221). However, jurists are not in agreement on the marriage to Magian and Sabian women. Those who consider them people of a book (*ahl kitāb*) allow it, and those who deny them such status prohibit it.

On the economic side, trade between Muslims and *dhimmīs* was organized, and rules were set for trade with *ahl al-ḥarb* (people of countries not under Muslim rule) although they were not actually *dhimmīs*. Commodities brought into Muslim territories by *ahl al-ḥarb* were subjected to tithing, whereas *dhimmīs* and *musta'mins* (people with a temporary residence) paid half the rate. Some *Ḥanafī* (one of the four Sunna branches) jurists ruled that certain necessary commodities should be exempt regardless of value, but others disagreed and insisted on their dutability. Again, jurists disagreed on the dutability of pork and wine: some ruled that they should be tithed; others argued that no duty may be collected on the pretext that since they were *ḥarām* (prohibited), any benefit derived from them would be equally *ḥarām*. According to some sources, commodities transferred by *dhimmīs* outside their own territories were subjected to a duty of one-tenth.

Sometimes the duty was reduced to half that rate for commodities, such as wheat and oil, carried by *dhimmīs* to Makka and Medīna.

What is certain, however, is that the duty levied from *ahl al-ḥarb* for trading in Muslim territories was, by the principle of reciprocal treatment, equal to what Muslims had to pay for trading in *dār al-ḥarb* without defining any percentage. Nevertheless, some jurists held to the one-tenth rate.

Ibn Ḥazm advocated the opinion that partnership, trade and dealings in general between Muslims and *dhimmīs* was absolutely permissible. He said: [23]

> "Partnership between Muslim and *dhimmī* is permissible inasmuch as there is no provision in the Quran or the Sunna prohibiting such partnership. The Messenger of God entered into agreement with the people of Khaybar, who were Jews, involving half the produce of their lands provided they worked with their funds and by themselves. This was a partnership in tilling, cultivation and crop. Also, the Messenger of God bought some food from a Jew in Medīna and pawned his armor with him for the purchase. In fact, the Prophet died while his armor was still in mortgage. This was a commercial transaction with the Jews. Therefore, transacting with them is permissible and anybody who disagrees would have no pretext in support of his argument."

However, socio-economic relations between Muslims and *dhimmīs* are usually dealt with under the heading "Utilization or seeking the help of non-Muslims" (*isti'ānah*). This is a major issue that invoked extensive argument and discussion among Muslim jurists ever since the *dhimmī* phenomenon came into being in the Muslim society through the first quarter of the present century, and was the object of many *fatwas* (formal legal opinion of a notable jurist). Muslim jurists took three stances regarding this issue:

1 One group disallowed *isti'ānah* with non-Muslims absolutely. Proponents of this opinion invoked the Quranic verse: "O believers, take not into your intimacy those who are outside yourselves; such men spare nothing to ruin you; they only desire your ruin. Hatred has shown of their mouths, and what their hearts conceal is yet greater" (III:118). Some ulema took the prohibition of "taking unbelievers into intimacy" to mean *isti'ānah* (seeking the help) in private affairs, and therefore barred seeking the help of *dhimmīs* because *isti'ānah* would facilitate for them getting intelligence of Muslim secrets. Proponents of this stance further confused *isti'ānah* with *muwālāh* (confederating with), and cited several *ḥadīths* warning against *muwālāh*, such as the saying of the Prophet: "Do not take light from the fire of *ahl ash-shirk* (polytheists)". They interpreted "taking light" as seeking help through consultation.

2. Another group allowed *isti'ānah* with non-Muslims unconditionally. Proponents of this opinion cited several incidents from the life of the Prophet in which he received help from non-Muslims.

3. The third group allowed conditional *isti'ānah*. One jurist said, "*Isti'ānah* is permissible if needed, and impermissible if not needed or if it may lead to harmful results". al-Marāghī, an exegetist of the Quran, opined that the reason for the prohibition is the state of animosity in the absence of which "taking of non-Muslims into intimacy" becomes allowed. A third one of this group restricted the prohibition to assignment of *dhimmīs* to posts of a religious nature, such as the post of the *imām* or army leader.

Some of the opponents of *isti'ānah* use as their pretext the fact that Muḥammad refused to accept the help of a non-Muslim in the Battle of Badr (the

first of Muḥammad's battles with Quraysh). But that incident cannot be taken as a precedent: (a) because it was an isolated incident, and (b) because the matter involved war secrets and there was no way to tell what were the real intentions of the man who offered help. Moreover, had Muḥammad been constrained for help in Badr, he would have accepted outside help, for he did accept such help in other situations, e.g., the Battle of Ḥunayn.

Some Muslim thinkers viewed the matter from the historical point of view and found that, in actual practice, *isti'ānah* was the general rule throughout all the successive Muslim states, at all levels of the society and in all fields. Ibn Khaldūn argues for seeking the help of non-Muslims in war and adopting the strategies of other nations in warfare, saying:

> "In view of the merits of drawing line formation behind the fighters and its proven advantages in charge and retreat tactics, Maghribī kings have resorted to employing groups of European Christians in their armies, who specialize in such warfare. Since their countrymen are used only to charge and retreat tactics, the sultan finds it expedient to set up lines to support those fighting in the front. The line fighters should be those who are accustomed to determined advance in lines, and the European Christians are such people. This is *isti'ānah* with unbelievers, and it is leniently viewed due to the necessity explained, since they dreaded panic among the sultan's lines, whereas the European Christians knew only firm stands, being used to advance in lines, and therefore are more suited for such warfare."[24]

On the other hand, al-Māwardī, author of *al-Aḥkām as-Sulṭāniyyah* (Principles of Government), allows *isti'ānah* up to the level of a ministry he calls "ministry of execution". He allows the holder of such a ministry to be a *dhimmī*. He defines the functions of the *vizier* (minister) as follows:

> "This minister is the link between the *Imām* on one side and the subjects and district governors on the other. He relays the *Imām's* orders, executes his instructions, implements his decrees, advises him of the assignment of governors and the mobilization of armies. He brings to the *Imām's* attention important matters and significant developments in order to implement the *Imām's* orders regarding them because his function is execution, not disposition of affairs. If he is called upon to give counsel, then he is truly a minister."

It seems that the sensitivity that attended this issue became more acute with the competition over state posts, such as the office of scribe, minister and other jobs of the *dīwān* (the ruler's council) in general. It was always easy to transfer the issue from the particular to the general: It would start between a Muslim and a *dhimmī* competing for a specific post, then it would turn into accusing the notable *dhimmī* of bias to his brethren in faith and favoring them with positions and salaries as well as letting them have their own way with Muslims.

For these reasons, *isti'ānah* continued to be re-echoed until recent times. An example of the questions raised about it was one referred to Shaykh Muḥammad 'Abduh, *Muftī* of Egypt, by a group of Muslim ulema in India to whom it was originally addressed:

> "What do the ulema have to say about a group of Muslims who aver that they believe in the faith of the Sunnis, follow the four leading jurists, endeavor to promote harmony and concord among Muslims, and call on well-to-do and wealthy people to raise Muslim orphans and propagate Islam in the face of campaigns of People of the Book and the onslaughts of the pagans, and yet they seek help from unbelievers, heretics and dissenters for the support of the Islamic faith, and preservation of the integrity of the Muḥammadan nation as well as re-uniting it: Is such *isti'ānah*

permissible under the *Sharī'ah* (Muslim law)? Did it have any similar instances in the first three respectable centuries, which are admittedly the good era? Is it allowable to a Muslim to oppose them in these worthy endeavors and good intentions, and try to discourage providing assistance to them and keeping their company because they seek help from unbelievers, heretics and dissenters, and meet and mix with them for such public welfare? What is the ruling as regards anyone who, for such practices, accuses them of infidelity, deception, ill-faith and breaking away from Sunnis?"

Questions addressed to *muftīs* were often phrased in a way that could only elicit the reply desired by the questioner because the *muftī* should not rephrase the question. In the question quoted above, the questioner combined, in the same breath, unrelated issues: He combined the raising of orphans by a Muslim with the call for the propagation of Islam; and then combined the two with seeking help from unbelievers, heretics and dissenters for the support of the Islamic community. After all that, he asked whether a Muslim could take a negative stand toward those who did such good deeds and sought the help of non-Muslims, and accuse them of infidelity; and what would be the ruling with regard to those who accuse them of infidelity.

Shaykh Muḥammad 'Abduh did not wish to give the answer all by himself, and sent copies of the question, for an expression of opinion, to the shaykh of the *Ḥanbalī* group and to some notable *Ḥanafī*, *Mālikī* and *Shāfi'ī* ulema (the four Sunni groups of jurists). What interests us here of their replies are the parts relevant to *isti'ānah* with non-Muslims.

Mālikī and *Shāfi'ī* ulema ruled that *isti'ānah* with non-Muslims was permissible if it was in terms of money and was for the good of the faith or served a worldly welfare, provided it did not entail any humiliation or *muwālāh*.They

cited precedents during the life of the Prophet. The Shaykh of the *Ḥanbalī* group sided with *isti'ānah* but restricted it to the general welfare of Muslims, such as craft skills and *jihād*. The *Ḥanafī muftī* ruled: "*Isti'ānah* with unbelievers, heretics and dissenters for the support of the Islamic faith and community is undoubtedly permissible and of no danger". He cited the saying of the Prophet: "God supports Islam with other than its people". The *Ḥanafī muftī* invoked the opinions of some of the *Ḥanafī imāms* who did not stop at allowing seeking *dhimmī* help, but also allowed a Muslim to visit and aid a non-Muslim even if the latter was in a state of war. In other words, they allowed pious integrity between Muslims and non-Muslims whether they were *dhimmīs* or not.

Isti'ānah can be easily dealt with when we consider human activities within specific fields. For instance, certain functions are of a religious nature and require special qualifications and adequate knowledge of Islam and its principles. *Ahl al-kitāb* can be excluded from such jobs. But the matter becomes much simpler with administrative jobs. Such jobs require capability to implement a preset policy rather than initiating a policy; and, here merit should be the only criterion for assignment. These jobs involve everyday affairs of the society, such as medicine, education, agriculture, and economic and social activities. Anyone who occupies such posts should be entitled to all the privileges and rights of the job, including social security. This is one aspect of economic security that was partially practised in certain areas when 'Umar ibn al-Khaṭṭāb gave certain individuals of *ahl al-kitāb* a share of *bayt al-māl* (Muslim treasury). 'Umar ibn 'Abd al-'Azīz (the seventh Umayyad caliph) wrote to one of his *wālīs*: "Look up what *dhimmīs* there are in your area who have become old and unable to generate any earnings and allocate them from *bayt al-māl* what would keep them".

As for activities outside government jobs, such as trade and earning of livelihood, jurists affirm that *ahl al-kitāb* and Muslims stand on equal footing as far

as these activities are concerned. There is nothing in the *Sharī'ah* that would curtail the freedom of *dhimmīs* or prevent them from engaging in all sorts of work. In fact, *dhimmīs* used, from the beginning of Islam, to engage in crafts, trade and industries without much ado.

One aspect of *isti'ānah* involves social attitudes, but these are usually manifested in the form of relations that cannot be controlled by any set of laws or rules. However, they often take a wider scope through added economic relations, such as participation in projects, or in public and private celebrations, or by working together for some national objectives, such as cultural and charitable societies, and in many other fields.

However, as we mentioned earlier, some people confused *isti'ānah* with '*muwālāh*' (confederating) with non-Muslims. *Muwālāh* means support and backing with a sense of following without discrimination between right and wrong. This is a type of relation that does not inherently bear the spirit of equality, and, therefore, must be rejected by Islam because it is contrary to its spirit.

Good relations and amicable cooperation for good objectives do not entail that a Muslim should sacrifice his faith, nor do they mean that a Jew or a Christian should give up his faith by coercion and compulsion. The intent is to smooth the way for a practical life based on promoting public welfare for the whole community through sincere and dedicated cooperation emanating from real conviction and free will. All parts of the society should keep in mind that any good that may befall the nation as a whole will be to the advantage of all, and any evil or disaster that may afflict it will affect all.

When we consider the total outcome of the opinions expressed and examine actual practices, we find that the arguments of cooperation advocates were much stronger and their influence wider and deeper. All sides of the controversy rely on contradictory traditionary pretexts and precedents. But, in the final analy-

sis, the deciding factor that should be considered first and foremost is the need and general welfare of the nation under the impact of changing circumstances. And this is indeed one of the basic rules of Islam. When prejudices are set aside and suspicions are suppressed to give way to confidence and trust, confirmed and deepened by experience, then putting the right person in the right place, regardless of any affiliations, would be the optimal principle.

The need for *isti'ānah* nowadays pervades all the walks of life and extends to encompass all fields of knowledge and human experience, the mastery of modern inventions and keeping abreast of new developments in science and technology, so much so that any further discussion of its permissibility or otherwise would be, under Islamic rules and principles, superfluous and anachronistic.

There remains one further ramification of the major issue that needs to be addressed separately due to its importance: namely, participation of non-Muslims in *shūra* (consultative) institutions.

Shūra permeates practically all human affairs: the judiciary system, administration, policy making, commerce, treaties and agreements, social affairs, technical matters, etc. The consultants in each field are the experts of that particular field. During the days of the caliphate, persons who gave counsel on matters related to government, justice, etc., were called *ahl al-ḥall wa al-'aqd* (literally, people of dissolution and resolution); and they were required to satisfy three conditions: integrity, knowledge, and wisdom.

Is it permissible to allow non-Muslims to participate in *shūra* institutions? In fact, this question stems from the main issue: Is it permissible to seek help from, or assign work to non-Muslims?

Shūra is indeed inseparable from other activities. However, it was unthinkable for a state in the formative stage, whose relations with its neighbor had not taken a clear shape, to employ counsellors holding faiths different from its

own. But when such state reached a stage of stability where it became sure of its ground and confident of its capabilities, then it did not find anything wrong with employing non-Muslims for administration as well as *shūra*, for the basis of *shūra* is equality among individuals and trust between rulers and subjects.

As in the case of *isti'ānah*, jurists' opinions on *shūra* vacillated between permission and prohibition as dictated by different circumstances. The case of *shūra* may be somewhat more clear cut. The Quran says, "Ask those who remember [know]", and enjoins obedience to "those in authority". Shaykh Muhammad 'Abduh interprets "*ahl adh-dhikr*" (those who remember [know]) as "those in authority". He adds: "Those in authority in our time are the leading ulema, army leaders, judges, major merchants and agriculturers, heads of public institutions, managers of associations and companies, party leaders, competent writers, physicians, lawyers and all those whom the nation can trust its welfare to".[25] Needless to say, these include Muslims and non-Muslims alike and extend to all types of affiliations in the society.

We had to deal with this point at some length because limited as it is, it has been the subject of typical exhaustive discussions where each party holds tenaciously to its pretexts and interpretations and would admit of no contradiction. This sufficiently demonstrates that resolution of issues pertaining to the treatment of non-Muslims will never reach an absolute unanimity on the theoretical level although most of the previous concepts relating thereto were dictated by certain historical circumstances and cultural (socio-economic) systems that are no longer in existence.

Modern man has kicked off the lawfulness of slavery, which religions did not disapprove, and sealed it off with a rigorous taboo. It more behooves the same man to obliterate the lines that continue to discriminate one group of human beings from another on the basis of color, race or religion, and believe, as did the

Ḥanafī ulema, that pious integrity and liberality should be the basis of mutual universal relationships that admit of no discrimination.

V

REGULATION OF RELATIONS BETWEEN DĀR AL-ISLĀM AND DĀR AL-ḤARB

Although this subject is not directly related to the major issue discussed in this book, it does, in a way, shed some light on the general topic. Here, we intend to clarify the conditions that prevailed between Muslims and non-Muslims who lived outside *dār al-Islām* or had temporary or intermittent dealings with it.

Both territories, *dār al-Islām* and *dār al-ḥarb*, needed each other. Inevitably, various types of relations developed between them, and these relations had to be organized and regulated in a spirit of cooperation at the state level for their mutual benefit and interest.

The Muslim state established, from the time of its inception, all sorts of relations with other nations covering peace, military, economic and scientific fields. People of *dār al-ḥarb* used to enter *dār al-Islām* and vice versa.

We have repeatedly referred to *al-musta'min*, that is the transient who enters *dār al-Islām* on a temporary basis under an assurance of safety (*amān*).

There is no disagreement among scholars on the permissibility of granting an *amān* to any person of *dār al-ḥarb* who may ask for it, regardless of religion or country, and regardless whether his intention is to seek knowledge of Islam, trade or any other legitimate purpose that does not entail any harm to Muslim interests. Jurists went further to make granting the *amān* mandatory if the intent is to be acquainted with the provisions of Islam or to become a *dhimmī*. They even asserted that any sane, adult Muslim, male or female, was authorized to give an

amān to a non-Muslim, based on the Prophet's saying, "The covenant of all Muslims is one," although some *Mālikī* scholars added, as a condition, "provided the *Imām* had not forbidden individuals from doing so", because the *Imām* and his agents are better qualified to take care of the interests and welfare of the state than individuals. They did not stipulate that the *amān* should serve any Muslim interest. They only stipulated that it should not entail harm to Muslims.

They are also in agreement that *al-musta'min* cannot reside indefinitely in *dār al-Islām*. Some limited such sojourn to a maximum of four months. The majority, however, considered the limit a prerogative of the *Imām* or his authorized agents, so long as the transient remained respectful of Islamic principles and abided by his covenant.

Rights of *al-Musta'min* in *Dār al-Islām*

The *amān* covenant entitles *al-musta'min* to enter *dār al-Islām*, to remain in it for the specified period without paying any poll tax, and to move freely throughout it with the exception of excluded places such as the Mosque of Makka. During his sojourn in *dār al-Islām*, *al-musta'min* enjoys a very fundamental and important right, namely, full security of his person, property and any family members accompanying him, if covered by the covenant. Any other conditions in the covenants are also honored, provided that such conditions do not violate any Islamic principles or entail harm to Muslims, and ensure a clear advantage for *al-musta'min* himself. The covenant is further supported by God's injunction in the Quran, "Ye who believe! Fulfill your bonds (contracts)". (V:1) In other words, *al-musta'min* had almost all the rights of *dhimmīs*.

Of the types of protection to be provided to *al-musta'mins*, according to jurists, is that the state should enable them to obtain what is due to them, to do them justice if they are wronged - like *dhimmīs* - and to defend them against any wrong or injustice that may befall them, while in *dār al-Islām*, from people of *dār al-*

ḥarb. If people of *dār al-ḥarb* invade Muslim territories and take any *musta'mins* as captives, Muslims or the Muslim state should rescue or free them from their captors, as it should do *dhimmīs*. Moreover, a *musta'min* could not be exchanged for a Muslim captive even if so demanded by *ahl al-ḥarb*, unless *al-musta'min* himself accepts the exchange. He cannot be delivered to *ahl al-ḥarb* or extradited to his own state, even under the threat of war because he is under the protection and security of *dār al-Islām* until he is returned to his place of safety. Otherwise, to deliver him would be an uncondonable breach of faith. This is in observance of the Quranic verse: "If one of the unbelievers asks you for protection, grant him asylum until he has heard the word of God. Then escort him to where he can find safety" (IX:6).

<u>Obligations of *al-Musta'min* in *Dār al-Islām*</u>

While *al-musta'min* is in *dār al-Islām*, he is required to observe the rules of Islam with regard to the conduct of his worldly affairs, including financial and commercial transactions. He should abstain from anything offensive to Muslims or their religion, such as ill-speaking of God, His Book, Religion or Messenger, because such behavior indicates scorn for Muslims and the religion of the Muslim state. He should also refrain from open indulgence in objectionable action or bringing in forbidden stuffs in a provocative manner even if he thinks they are permissible to him.

A *musta'min* is further obligated to refrain from harming Muslims or *dhimmīs* in person, property or any other respect just as they are obligated toward him. Finally, he should fulfill the financial terms of his covenant and observe the time limit stated therein.

<u>Entrance of Muslims into *Dār al-Harb*</u>

The interests of both Islam and Muslims require intercourse with people of other religions whether in *dār al-Islām* or in *dār al-ḥarb*. They have to enter *dār*

al-ḥarb to call its people to Islam and to pursue some economic or scientific interests as well as other worldly interests. This was the practice in the days of the Prophet, the Orthodox Caliphs and throughout the following centuries.

There is nothing in the Quran or the Sunna that prevents a Muslim from going to *dār al-ḥarb* for a legitimate purpose that serves a private or public interest. No jurists advocated prevention of Muslims from going to *dār al-ḥarb* and staying in it for the time allowed by its laws unless their faith or property was in jeopardy.

However, jurists made a distinction between two situations:

a) When a Muslim would be weak in *dār al-ḥarb* and would not be able to declare his religion or exercise its rite, and therefore, he is likely to be lured away from it. In such cases, a Muslim would be barred from going to *dār al-ḥarb*. If he is of the people of *dār al-ḥarb* and embraces Islam under such conditions, then he must emigrate to *dār al-Islām* or to a place where he can openly exercise his religious duties.

b) When a Muslim is provided full protection in *dār al-ḥarb* and is free to perform his religious duties, he is allowed to go and reside in it.

In fact, there is no sense in arguing about whether or not it is permissible for a Muslim to go to a non-Muslim country where he is assured of safety and religious freedom, such as we see in most western countries today. Circumstances in non-Muslim countries have drastically changed, and an alien in them is accorded legal and judicial protection just like a citizen, regardless of faith or religion. Mosques and other Islamic institutions are being established in many western countries, and Muslims are allowed to perform their religious duties without harassment or hindrances. This state of affairs, in addition to some other attractions, has encouraged counter-emigration by Muslims to non-Muslim countries. Moreover, the ever-increasing need of Muslim countries to draw on the advanced

sciences, technology and arts of other countries, as well as economic considerations has made intercourse with non-Muslim countries absolutely indispensable.

When a Muslim is a *musta'min* in *dār al-ḥarb*, he should refrain from doing any harm to its people in person, property or anything else, because this is a requirement of the *amān* he had obtained, which makes such offence a breach of faith which is *ḥarām* (forbidden) in Islam.

If he commits any perfidy against them by stealing or forcibly taking or borrowing any property of theirs, and then returns to *dār al-Islām*, he should be obligated to return what he acquired in this way because they had given him a covenant of safety and such action is a violation of the covenant.

<u>Dealings between *Dār al-Islām* and *Dār al-Harb*</u>

1. Commercial Transactions in *Dār al-Islām*:

   People of *dār al-ḥarb* (or *ahl al-ḥarb*) are, as we said earlier, allowed to enter *dār al-Islām* for trade or any other legitimate purpose. Jurists have set down the rules governing their commercial transactions with people of *dār al-Islām* whether they are Muslims or *dhimmīs* or among themselves.

   The general principle is that the rules that apply to Muslims and *dhimmīs* in *dār al-Islām* with regard to all legal obligations and civil affairs apply also to them. As they have entered *dār al-Islām* under a covenant of safety, they are bound by the rules of Islam. If their transactions satisfy all rules and conditions, then they are proper transactions having full force and effect whether they are with Muslims or *dhimmīs* or among themselves.

   Based on this rule, some scholars argue that a *musta'min* cannot trade in what is prohibited to Muslims in Islam, such as pork and wine, or resort to usury.

Their transactions are subject to *Sharī'ah* rules in force in *dār al-Islām* if such transactions are referred to the Islamic judiciary system. However Muslim judiciary cannot bring them to account in cases of legally imperfect transactions where neither party is Muslim unless such transactions are brought to them for adjudication.

Jurists, however, have set no limitations on what can be brought from *dār al-harb* into *dār al-Islām* by a Muslim, *dhimmī* or *musta'min* unless the material is forbidden or harmful.

On the other hand, jurists have approved, in principle, the imposition of taxes or duties on imports by Muslims, *dhimmīs* or *musta'mins*, but disagreed as to the applicable rate. As we pointed out earlier, some of them held to a flat 10% rate, while others advocated reciprocal treatment, that is to levy the tax at the rate applied by *dār al-ḥarb* authorities to Muslim or *dhimmī* merchants when they go into their territories.

However, such matters are the prerogative of the *Imām* to be decided in the best interests of Muslims or as provided for in international agreements.

2. Exports from *Dār al-Islām*:

Jurists have set certain limitations on exportable materials from *dār al-Islām* to *dār al-ḥarb* based on the best interests of Muslims. Trade is generally permissible provided it would realize some private or public interest. If any evil is likely to come from it, then it ceases to be legal, based on the rule: "Obviation of evil takes precedence over realizing good when both are equal or the evil is greater".

The economic factor has always been of paramount importance to all states. It is often used as a means of pressure for the realization of certain interests of the state. Modern states quite often resort to cancella-

tion of all commercial and financial contracts with the enemy in case of war because such contracts have become prejudicial to the best interest of the state.

The limitations set by jurists for control of exports to *dār al-ḥarb* are two:

a) Any commodity that can be used by *dār al-ḥarb* against *dār al-Islām* or that can help the people of *dār al-ḥarb* to fight or coerce Muslims cannot be exported to them. While they are in agreement on the general rule, they disagree on the commodities that are beneficial to *dār al-ḥarb* and detrimental to *dār al-Islām*. However, in the final analysis, such matters are to be left to the judgement of those in authority for they are in a better position to decide how to obviate evil and realize the best interests of the state.

b) Materials that Muslims are forbidden to use cannot be exported by them to *dār al-ḥarb*. As for materials that are outlawed internationally, such materials cannot be exported by merchants to *dār al-ḥarb* regardless of faith or country, based on the general rule: "No harm is to be inflicted or endured".

3. Commercial Transactions in *Dār al-Ḥarb*:

One of the general rules in jurisprudence is that when a Muslim or *dhimmī* enters *dār al-ḥarb*, he has to respect the lives, property and honor of its people. What he is allowed of their property is exactly what *al-musta'min* is allowed of the Muslim's or *dhimmī's* property in *dār al-Islām*. He has entered *dār al-ḥarb* under a covenant and he is bound under Islam to abide by the provisions of his covenant; otherwise, he would be committing a breach of faith or treachery, which is sternly forbidden in Islam.

Moreover, any commitment made by a Muslim or *dhimmī* in *dār al-ḥarb*, if legally proper, is binding whether such commitment is given by word or deed.

4. Donations from Muslims to *Dhimmīs* and *Musta'mins* and Vice Versa:

Divine ordinances require Muslims to endeavor devotedly to attract non-Muslims to Islam or to strengthen the faith in their hearts once they embrace it. One of these provisions is the encouragement of donations among Muslims and to people of other religions to gain their support or prevent their annoyance. This is explicitly expressed in the Quranic verses: "God forbids you not, as regards those who have not fought you in religious cause, nor expelled you from your habitations, that you should be kind to them, and act justly towards them, surely God loves the just" (LX:8).

The types of donations encouraged by Islam and for which jurists have set down regulating rules are:

a) Donation: Can be given to a *dhimmī*, *musta'min* or fighter in *dār al-ḥarb* or *dār al-Islām* and vice versa.

b) Will: Same as donation in all respects.

c) *Waqf* (endowment): People of *dār al-Islām* can make an endowment in favor of *al-musta'mins* but not fighters in *dār al-ḥarb*. Similarly, *al-musta'mins* can make endowments in favor of Muslims or *dhimmīs*.

We have so far given examples of regulations governing dealings between *dār al-Islām* and *dār al-ḥarb*. However, the relations between the two require organization and regulation of all matters pertaining to their inter-relationships, penalties on all crimes, etc. But to go into all these details would take us beyond the limited scope of this book.

VI

RIGHTS OF MUSLIMS AND NON-MUSLIMS IN ISLAM

For a clear understanding of the status of *dhimmīs* within the Islamic system, we have, first of all, to recognize the rights enjoyed by Muslims under Islam. A comparison of human rights in Islam and human rights as defined in international charters will give us a wider perspective to view the matter from all angles.

Human rights, from the point of man's relationship with God, start as a gift bestowed by the grace of God on man. Such a gift soon develops, with the implications of general responsibilities in the human society, into a set of rights and obligations. Life itself is a gift of God, but preserving it from being violated or usurped becomes a right. The same thing can be said of honor and learning, and of food, water, habitation and raising a family. Responsibility began once man became the vicar of God on earth. Then rights and obligations began to take shape gradually, not only towards God, but also between man and man, as communities began to emerge.

The first of these rights (obligations being set aside) was the right of citizenship. Of course, this right was not known to man by this term, but as an affiliation or attachment to a family, a home or a larger entity. When the community became larger, communal relationships had to be organized and duties had to be distributed. With such development there emerged the right to work, the right to seek justice, the right of movement, etc.

The most universal and distinct in evolution was the right of ownership. Excessive immoderation in the concept of the right of ownership produced the right/obligation of social inter-dependence or solidarity. Ibn Ḥazm has explained

this right/obligation in definitive terms, saying, "It is mandatory on the rich of each town (community) to support its poor, and the sultan is entitled to compel them to do so if the *zakāh* due from them and from the rest of Muslims is inadequate for supporting them. They should be provided with the essential food, with winter and summer clothing and with lodging to protect them from rain and sun and from being seen by passers by" [26] Thus Ibn Ḥazm has extended social inter-dependence to include other rights (right to food, right to clothing, right to lodging) and, of course, it can be further extended by increasing the number of human essential needs.

All the above can be described as the infrastructure of human rights in Islam. Above this infrastructure, there came other groups of rights that emanate from freedoms, such as:

1. Freedom of faith
2. Freedom of expression
3. Freedom of thought

However, these freedoms, as well as the rights based on them, cannot remain safe from impairment, confiscation or collapse unless they are all guarded by the right of security and protection.

This divergence of rights was always accompanied by certain prerequisites that constituted the ground which rights needed to grow and diverge One of these prerequisites is the belief that all people have one God and are the progeny of one father: all people are from Adam and Adam was made of clay (*ḥadīth*); "The noblest among you in the sight of God is the most godfearing" (XL:13). This was the simple expression of the greatest human reality: "equality". This equality was translated by 'Umar ibn al-Khaṭṭāb's saying when his governor's son wronged a *dhimmī*: "By what right do you enslave people after

they were born of their mothers free?!" [27] This is, in fact the First Article of the International Declaration of Human Rights (1948), which provides as follows:

> "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

The Second Article provides:

> "Everyone is entitled to all the rights set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Adherence to the principle of equality would guarantee the realization of justice. Any deviation toward the discrimination alluded to in the Second Article tends to violate the spirit of justice and invalidate the First Article. The two Articles are, therefore, complementary. The spirit of justice is an end by itself, but the ways to that end are not easy to define or specify. However, every way that leads to it, whether we know it now or may know it in the future, is a mandatory route that one cannot afford to bypass in the application so long as it is a way to justice. This is what ibn al-Qayyim called "Fair Policy". He is certainly correct when he states that "Fair Policy" is in complete harmony with the "Perfect *Sharī'ah* (law)". This means that if the human society found, for instance, a new way to be fair to slaves, as by emancipation, then this way is the one that merits adoption, and it is, at the same time, in harmony with the spirit of Islam. The same thing can be said of free-labor, safeguarding of prison inmates and other issues that were not specifically provided for in Islam, in addition to new rights that have been incorporated in the structure of the society but were not provided for in Islam or any other religion. The Articles of the International Declaration of Human Rights, in an effort to avoid the varying ideologies of all nations, have been drawn up outside any religious

frame of reference or source; and adherence to, or violation of these Articles has not been linked with any reward or punishment in the hereinafter. The Declaration is, more or less, a set of recommendations that derive strength from the equality that is concomitant to human dignity. Consequently there have been many deviations from the course envisaged by the Declaration. There is still much racial discrimination, color discrimination, depriving people of their most equitable rights, and so on.

Islam sets three levels of rights: (a) essential level, (b) need level, and (c) betterment or complementing level. The essentials are five: preservation of religion (or faith), person, progeny, property and mind. To use the simile of the tree, we would say that its root is human dignity and its main branches are the five essentials just mentioned with some twigs representing the needs and others representing the betterments. But this tree needs care to remain alive and continue to grow. Such care takes, in Islam, the form of legislations that safeguard the essentials from infringement or transgression. But what if these rights are violated by enactment of unfair laws or legislations? Here also the religious frame of reference fails to protect the rights from impairment because it links injustice to punishment in the other world. Consequently the binding legislations cease to be binding and take the status of non-binding recommendations.

When we consider these rights thoughtfully, we find that both Muslims and non-Muslims (in *dār al-Islām*) shared them on equal footing. When the Muslim society consisted of Muslims, *dhimmīs* and *musta'mins*, some of these rights were not expressed in such explicit, definitive terms as they are today. However, they were assumed as a matter of course without discussion or argument, and without being committed to written instruments. The most salient rights that the society recognized for non-Muslims (*dhimmīs* or *musta'mins*) in *dār al-Islām* were:

1. The right of protection from any local or outside aggression or wrongdoing. Such protection guaranteed safety of their person, property honor and the sanctity of their homes.
2. The right of movement in *dār al-Islām* and taking residence in any part or area indiscriminately with the probable exception of the Ḥijāz and specifically Makka.
3. Freedom of faith (including manner of worship and religious rites). The covenant given by the Prophet upon his arrival in Medīna contained the stipulation, "The Muslims shall have their faith and the Jews theirs"; and his message to the people of Yemen stipulated, "Whoever adopted Judaism or Christianity shall not be required to turn away from his faith" This was an application of the Quranic injunction, "There shall be no compulsion in religion" There are numerous historical instances where this rule was applied.
4. The right of expression of opinion.
5. The right of learning.
6. The right of meeting.
7. The right of utilizing state facilities, such as the means of transportation, irrigation systems, water supplies and satisfying the needs of the insolvent in case of sickness, old age and disasters.
8. Freedom of work.

In addition to these rights, there were other rights unrelated to religious creed, such as contracts, trade transactions and *waqfs*.

Comparison of these rights with the present list of human rights will show that those given to non-Muslims in *dār al-Islām* (with the exception of *musta'mins*), when the *dhimma* system prevailed, represented a good number of freedoms, and that the system was at that time an advanced example of fair treatment. How-

ever, after that system ceased to exist and was superseded by the concept of citizenship, the number of freedoms enjoyed equally by all the members of the society increased greatly; and, naturally, no one would like to give up his newly earned advantages and take a backward step.

As for *al-musta'min*, he continues to be denied political rights that are the privilege of citizenship, such as the right of candidature, the right of election and the right to assume public offices (except within the limits drawn by the laws of the state). However, he has other human rights allowed to a member of the society, including freedom of faith, provided he abides by the laws of the host state and does not contrive or work against its interest.

VII

PRESENT AND FUTURE: A GENERAL OUTLOOK

Any discussion of the past and the present, especially that concerns human relations which are in constant evolution and development, will be futile if it does not take into consideration near and long-range future. Such discussion requires revision and re-adjustment of the modes of thinking and approach while considering the positive aspects of the past for fusion with modern practices and ideas in an effort to form a conception of the future.

The focal point of a sound conception lies, in our opinion, in a citizenship that takes into consideration the dialectics of the state and man in Islam, inasmuch as each of them has a special nature with marked characteristics.

The state in Islam is founded on a system that derives its spirit and principles from the *Sharī'ah*, and is based on belief in one God, *shūra* and justice We should keep in mind that Islam constitutes a civilization and culture of distinctive character that left its stamp on Muslims as well as non-Muslims who lived with them, and had a universal, far-reaching influence.

Islam is, first and foremost, a sublime human message that starts with the call to believing in the oneness of God and ends with an idea of unity that fuses in its crucible all the people for the realization of justice, equality, freedom, security and dignity without any type of fragmentation or any class or sectarian distinction.

Within this framework, the Islamic state is supposed to bond its subjects by ties of order, thought, culture, values and traditions as well as methods of investment and production and patterns of life and behavior rather than by bonds of race, color, tribal or sectarian affiliations.

The link in this human relationship is man himself who possesses a set of potentials and energies that shape his humanity, give him a sense of being by himself and with other individuals, and instill in him the capability for work and production.

Some of these potentials and energies are latent in the nature of man as a creature attached to a certain land in which he can move consciously or unconsciously, and, through identification with it, tries to preserve and develop himself.

While primitive nature allows man to have one-dimensional existence in the land on which he lives, the spiritual element interferes to give him a divine dimension that brings about equilibrium to meaningful human life through individual and collective values and ethics.

In conjunction with the primitive nature and the spirituality, the mind works on the consciousness and feelings of man as well as his will and thought to direct, plan, execute and control his dynamism. This gives citizenship the true meaning that should be kept in the minds of Muslims and non-Muslims as they live together in the same country.

This concept is translated in the loyalty to the country: its land, tenets, history, civilization, culture, present reality and destiny; that is by its set of transcendental values and principles in which the people as a whole believe and which permeate their minds, souls, feelings and subconscious, to act as the prime mover for steadfast resistance and continuing advancement and development.

This is indeed an honorable and responsible citizenship that derives from the honor conferred on man by God: "We have honored the Children of Adam and carried them on land and sea, and provided them with good things, and preferred them greatly over many of those We created" (XVII:70). This honor is ex-

pressed in the Quran in many forms and capabilities, the most salient of which are two:

1. The ability to bear trust.
2. The ability to live collectively regardless of differences in faith: "O mankind, We have created you of a male and female and made you races and tribes, that you may know each other. The noblest among you in the sight of God is the most godfearing" (XL:13). The Quran allows this freedom of faith and leaves judgement of differences to God: "God will judge between them on the Day of Judgement as to their differences" (XVI:124).

This religious tolerance on the part of Islam is manifested in several types of ties and relationships, including the psychological, the social and the behavioral. It finds its culmination in the sayings of the Prophet: "Whoever harms a *dhimmī* shall have me as an antagonist". "Whoever kills a person under covenant shall not have a whiff of the smell of Paradise."

With such tolerance, Islam delineates citizenship as it should be in the state. It is a citizenship that bonds the citizens together with strong and deep ties, and enables them to join their past with their future, and their beginning with their destiny. It activates their sentiments and positive thinking; it urges them toward serious productive work; and it endows them with a feeling of security and happiness, or, at least, with aspirations full of hope and anticipation.

Such citizenship requires four pillars to remain strong and steadfast, namely: equality, freedom, identity and development.

1. Equality: It is expressed by the Prophet, "Ye people of Quraysh! God has abolished the honors of Jahiliyyah when glory was to be sought in ancestry . . . All people are from Adam and Adam was of clay". Such

equality has two aspects: one before the law and justice institutions; and the other in employment and work.

Here are two items which pertain to non-Muslims: *jizyah* in lieu of military service; and, assignment of responsible positions to non-Muslims, especially in political, diplomatic, financial and military fields. We have dealt with these considerations earlier.

2. Freedom: We have dealt with the various ramifications in the discussion on rights.
3. Identity: Identity depends on education and the availability of education opportunities to all. It also reflects culture, which characterizes the personality of the citizen, his attitudes and his creative potentials. The national language is considered the starting point of culture and it affects identity through planning for a national culture and encouragement of creativity and inventiveness in all fields.
4. Development in various economic, social and cultural fields.

The future of a nation, and consequently the future of its constituent groups, is no longer dependent only on participation in government administration or being present in legislative or executive councils in ratios reflecting the sizes of the groups. It is rather dependent on the extent to which the regime assures the nation in the way of security, stability, food and work opportunities and the degree it provides for development in the various fields that help the nation to emerge from the state of backwardness and achieve sufficiency, justice, dignity and security. These are indeed the aims advocated by Islam.

Development needs three basic elements: well-thought scientific plans and programs that take into consideration the near and long-range future, and setting up a sound machinery based on science and expertise; pursuit of justice

by combating monopoly; and, provision of services and social security to all citizens.

Educated freedom abetted by will and determination, with values and creative and inventive potentials, all these constitute the formative and unifying elements of any society. A society cannot be coherent, or remain coherent, without being capable of coexistence, and without inter-coordination. An individual can have such capability only within a congregation, and a minority can only have it when it is fused in, and integrated with the majority to consolidate the unity of the nation.

However, the characteristics of any minority, whether they pertain to faith and religion or otherwise, are not enough to distinguish it from the society. Excessive insistence on such distinction might drive certain elements of that minority to adopt unwholesome behavior that would disturb the harmony of the society and shatter its unity. It might even lead to a desire for separation from the society altogether, and end up in the dismemberment of the society as well as the minority itself because these individual characteristics, however elaborated and pressed by sectarian separatist thought, are inadequate for creating an independent body politic or even an entity within the larger whole, for they merely represent one, and only one, of the elements that shape the identity. Moreover, no body politic can exist without certain material and moral considerations that are to be found in the integrated identity. The most important of these considerations are:

1. A gathering of human beings capable of forming one whole.
2. Land with a history associated with such gathering.
3. Cultural heritage associated with that history.
4. Capability to establish institutions and systems, and enact laws.

5. Availability of economic resources and potentials to satisfy the needs of the people.
6. Social conditions that bond the people together.
7. Free will and freedom of action.
8. Ability to exercise self-government without any foreign interference or outside hegemony.

A minority, religious, political or racial, has no right to insist on steering the procession of the whole or else separate from the whole. Neither Islam nor any other system would condone such arbitrariness. The minority in such cases would be seeking special distinction and ascendence rather than equality or justice.

The majority in modern democratic regimes endeavors to implement its policy plans and political programs. However, there might come a time when the scales are tipped and the majority becomes a minority and vice versa. Till then, the minority has to wait, accede to the policies of the majority and harmoniously participate in the procession of the nation, without giving up, or being deprived of, its right to be on the side of the opposition and express different opinions.

However, this phenomenon of shifting ratios is slower in entities which are characterized by permanence with little susceptibility to change as is the case with religious minorities which unite with the majority in everything except faith.

But regardless of the desire for a total and comprehensive agreement, and notwithstanding the degree of harmony among the groups, the individual personal freedom of minority members, as far as faith is concerned, should remain untouchable even if the minority is no more than a few individuals. This has been the attitude of the Islamic *Sharī'ah* when it left to non-Muslims full religious freedom without affecting the unanimity of the nation.

In fact, Rousseau advocates this Islamic position when he states that there is only one law that demands unanimous acceptance, namely the Social Contract. Opposition to the Social Contract, he says, does not annul it but only prevents the opposing parties from being integrated in the whole to become aliens among the citizenry. Outside this primary contract, the voice of the majority is always binding in consequence of the contract itself. An individual has to accept the very laws that are enacted in spite of him and which penalize him if he violates them, because they are passed by the collective will of the nation.

In order not to lose that freedom completely, it should be safeguarded against all sorts of domineering and highhandedness. If a minority attempts to dominate, even within its narrow isolated milieu, its attempt may lead to the division of the large entity; and the state would be dismembered into petty states ruled by petit dictators who do not hesitate to resort to force to protect individual gains for themselves and their bands or cliques.

There are minorities of one type or another in most, if not all, countries of the world. They can be a source of strength and prosperity if they see themselves, and are looked upon, with open minds in a national collective context. On the other hand, they can be a source of misery and frustration if used, for ulterior motives, as elements of divisiveness and dismemberment.

Within the framework of national unity, there is nothing in the fundamental constitution of Islam that prevents a Muslim state from adopting a modern system capable of assuring all sectors of the society of equality, justice and decent life.

NOTES

1 These refer to the sura and verse in the Quran.

2 For a detailed discussion on the authenticity of these messages and other documents, see Dr. 'Abdul Hādī al-Tāzī's article in the Arabic version.

3 *Ṣaḥīḥ Muslim*, *Jihād*; *Musnad Aḥmad ibn Ḥanbal* 4:74

4 *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*; *Musnad Aḥmad ibn Ḥanbal* 1:262

5 *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim*

6 Ibn Kathīr: *Sīrah* (Biography of the Prophet) III:494-515

7 al-Baḥrayn, to early Muslim historians, referred to the territory along the eastern coast of Arabia, consisting mainly of the oases of Qaṭīf and Ḥajar (al-Ḥasa). The island presently known as Bahrain was called Awal. For the text of the message, see al-Qalqashandī: *Ṣubḥ al-A'shā* VI:377.

8 al-Balādhurī: *Futūḥ al-Buldān*, ed. by Ṣalāḥ ad-Dīn al-Munajjid, Cairo, p. 72

9 al-Balādhurī: *Futūḥ al-Buldān*, pp. 77-78. See also Abū 'Ubayd al-Qāsim ibn Sallām: *Kitāb al-Amwāl*, ed. by Muḥammad 'Amārah, Cairo, 1989, pp. 280-281.

10 *Tārīkh aṭ-Ṭabarī*, ed. M. Abu al-Faḍl Ibrāhīm, *Dār al-Ma'ārif*, III:609; The History of aṭ-Ṭabari, (Translated by Yohanan Friedmann) XII:191 ff. See also Mujīr ad-Dīn al-Ḥanbalī: *al-Uns al-Jalīl bi Tārīkh al-Quds wa al-Khalīl*, 'Ammān, 1973, I:253-254.

11 The reading of *al-Uns al-Jalīl* (مقيمها وبريّها) rather than aṭ-Ṭabarī's (سقيمها وبريئها).

12 Suggested reading (وسائر ملئها) for (وسائر ملّتها) as in the sources, which gives a clearer and more reasonable sense.

13 The text of *al-Uns al-Jalīl* which omits the phrase (قبل مقتل فلان = before the killing of so and so) has been adopted.

14 al-Balādhurī: *Futūḥ al-Buldān*, p. 144

15 al-Balādhurı: Futūh al-Buldān, p. 162

16 ad-Dabbī: *Bughyat al-Multamis*, p. 259 al-Himyari: *ar-Rawd al-Mi'tār*, ed. by Ihsan 'Abbās, Beirut, p. 132; J. F. O'Callaghan: History of Medieval Spain, p. 94.

17 Abū'Ubayd: *Kitāb al-Amwal* (ed. Muhammad 'Amārah), Cairo (1989), pp. 263-264.

18 Ibn Hazm: *al-Muhallā* VII:317

19 *Tārīkh at-Tabarī*, IV:11

20 AbūYūsuf: *Kitāb al-Kharāj*, ed. Ihsān 'Abbās, Beirut, p. 307

21 Literally, the term means "territories of war", i.e. where war could eventually take place.

22 Here are some Quranic verses that enjoin resorting to peace:

(a) "If they should incline to peace, then incline to it and rely on God" (VIII:61).

(b) "Ye who believe, enter into peace, all of you" (II:208).

(c) "If they withdraw from you, and do not fight you, and offer you peace, then God assigns not any way to you against them" (IV:90).

(d) "And say not to him who offers you a greeting, 'You are not a believer' " (IV:94).

23 Ibn Hazm: *al-Muhallā*, VIII:125

24 Ibn Khaldūn: *Muqaddimah*, ed. 'Alī 'Abd al-Wāhid Wāfī, Cairo, 1958, p. 657 ff

25 Muhammad Rashīd Ridā: *Tafsīr al-Manār*, V:181, 198

26 Ibn Hazm: *al-Muhallā*, VI:156

27 Ibn al-Jawzi: *Manaqib 'Umar ibn al-Khattāb*, p. 99

ARABIC TERMS USED IN THE TEXT

'ahd	covenant
ahl adh-dhikr	those who know
ahl adh-dhimma	people under covenant (covenantees)
ahl al-arḍ	people of the land (villagers)
ahl al-ḥall wa al-'aqd	people of dissolution and resolution
ahl al-ḥarb	people of non-Muslim territories
ahl al-kitāb	People of the Book
ahl ash-shirk	polytheists
ahl adh-dhimma	dhimmīs
al-mu'āhidah	covenantees
al-musta'min(s)	one with a covenant of limited period
amān	pledge of safety
awāqi	(see ūqiyyah)
bayt al-māl	Muslim treasury
dār al-ḥarb	non-Muslim territories
dār al-Islām	Muslim territories
dhimma	covenant
dhimmīs	covenantees (ahl adh-dhimma)
dīwān	council; office; register
fatwa	formal legal opinion of a notable jurist
fī dhimmat rasūl Allāh	under the covenant of the Messenger of God
fī jiwār Allāh	in the refuge of God
ḥadīth	saying of the Prophet; tradition
Ḥanafī	follower of Imām Abū Ḥanīfah

Ḥanbalī	follower of Imām ibn Ḥanbal
ḥarām	prohibited
hijra	immigration
imām	leading jurist; the ruler
isti'ānah	seeking help
Jāhiliyyah	Pre-Islam
jihād	(holy war)
jizyah	poll tax
kafālah	guarantee; bond
Mālikī	follower of Imām Mālik
muftī	chief Muslim jurist
muwāda'ah	state of truce
muwālāh	confederating with a sense of following
Shāfi'ī	follower of Imām ash-Shāfi'ī
Sharī'ah	Muslim law
shūra	consultation
ūqiyyah	weight measure (about 125 grams)
wālī	governor
waqf	endowment
zakāh	alms-tax

FOR FURTHER READING

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